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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
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10		CASE NO. 5:22-cv-00892-MWF (KKx)
11	KIMBERLY THOMAS, an individual,	<i>Assigned to Honorable Judge Michael</i>
12	Plaintiff,	<i>W. Fitzgerald, Dept. 5A]</i>
13	v.	[PROPOSED] PROTECTIVE
14	WALMART, INC., and DOES 1 through	ORDER
15	25, inclusive,	[NOTE CHANGES MADE BY
16	Defendants.	COURT]
17		FAC Filed: July 5, 2022
18		Trial: September 12, 2023

19 On Stipulation, Plaintiff KIMBERLY THOMAS (“Plaintiff”) and Defendant
20 WALMART, INC. (Defendant”), the Court enters a Protective Order in this matter
21 as follows:
22

23 **I. PURPOSES AND LIMITATIONS**

24 The parties, by their undersigned counsel, pursuant to Fed. R. Civ. P. 26(c)(1),
25 hereby stipulate to the following provisions of this Stipulated Protective Order. The
26 parties agree that nothing in this Order shall be deemed to limit the extent to which
27 counsel for the parties may advise or represent their respective clients, conduct
28 discovery, prepare for trial, present proof at trial, including any document designated

1 protected information as set forth herein, or oppose the production or admissibility of
2 any information or documents which have been requested.

3 Discovery in this Action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public disclosure
5 and from use for any purpose other than prosecuting this litigation may be warranted.
6 Accordingly, the parties hereby stipulate to and petition the Court to enter the
7 following Stipulated Protective Order. The parties acknowledge that this Order does
8 not confer blanket protections on all disclosures or responses to discovery and that
9 the protection it affords from public disclosure and use extends only to the limited
10 information or items that are entitled to confidential treatment under the applicable
11 legal principles. The parties further acknowledge, as set forth in Section XIII(C),
12 below, that this Stipulated Protective Order does not entitle them to file confidential
13 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
14 followed and the standards that will be applied when a party seeks permission from
15 the Court to file material under seal.

16 **II. GOOD CAUSE STATEMENT**

17 A. This Action is likely to involve commercial, financial, and/or proprietary
18 information for which special protection from public disclosure and from use for any
19 purpose other than prosecution of this Action is warranted. Such confidential and
20 proprietary materials and information consist of, among other things, confidential
21 business or financial information, information regarding confidential business
22 practices, or other confidential research, development, or commercial information
23 (including information implicating privacy rights of third parties), information
24 otherwise generally unavailable to the public, or which may be privileged or otherwise
25 protected from disclosure under state or federal statutes, court rules, case decisions,
26 or common law. Accordingly, to expedite the flow of information, to facilitate the
27 prompt resolution of disputes over confidentiality of discovery materials, to
28 adequately protect information the parties are entitled to keep confidential, to ensure

1 that the parties are permitted reasonable necessary uses of such material in preparation
 2 for and in the conduct of trial, to address their handling at the end of the litigation,
 3 and serve the ends of justice, a protective order for such information is justified in this
 4 matter. It is the intent of the parties that information will not be designated as
 5 confidential for tactical reasons and that nothing be so designated without a good faith
 6 belief that it has been maintained in a confidential, non-public manner, and there is
 7 good cause why it should not be part of the public record of this case.

8 **III. DEFINITIONS**

9 A. Action: This pending federal lawsuit titled *KIMBERLY THOMAS, an*
 10 *individual v. WALMART, INC., and DOES 1 through 25, inclusive*.

11 B. Challenging Party: A Party or Non-Party that challenges the designation
 12 of information or items under this Order.

13 C. “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” Information or
 14 Items: Information (regardless of how it is generated, stored or maintained) or
 15 tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c),
 16 and as specified above in the Good Cause Statement.

17 D. Counsel (without qualifier): Outside Counsel of Record and House
 18 Counsel (as well as their support staff).

19 E. Designating Party: A Party or Non-Party that designates information or
 20 items that it produces in disclosures or in responses to discovery as
 21 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

22 F. Disclosure or Discovery Material: All items or information, regardless
 23 of the medium or manner in which it is generated, stored, or maintained (including,
 24 among other things, testimony, transcripts, and tangible things), that are produced or
 25 generated in disclosures or responses to discovery in this matter.

26 G. ESI: Electronically stored information.

27 H. Expert: A person with specialized knowledge or experience in a matter
 28 pertinent to the litigation who has been retained by a Party or its counsel to serve as

1 an expert witness or as a consultant in this Action.

2 I. House Counsel: Attorneys who are employees of a party to this Action.
3 House Counsel does not include Outside Counsel of Record or any other outside
4 counsel.

5 J. Non-Party: Any natural person, partnership, corporation, association, or
6 other legal entity not named as a Party to this Action.

7 K. Outside Counsel of Record: Attorneys who are not employees of a party
8 to this Action but are retained to represent or advise a party to this Action and have
9 appeared in this Action on behalf of that party or are affiliated with a law firm which
10 has appeared on behalf of that party.

11 L. Party: Any party to this Action, including all of its officers, directors,
12 employees, consultants, retained experts, and Outside Counsel of Record (and their
13 support staffs).

14 M. Producing Party: A Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.

16 N. Professional Vendors: Persons or entities that provide litigation support
17 services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 O. Protected Material: Any Disclosure or Discovery Material that is
21 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

22 P. Receiving Party: A Party that receives Disclosure or Discovery Material
23 from a Producing Party.

24 **IV. SCOPE**

25 A. The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or extracted
27 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
28 Protected Material; and (3) any testimony, conversations, or presentations by Parties

1 or their Counsel that might reveal Protected Material. However, the protections
 2 conferred by this Stipulation and Order do not cover the following information: (a)
 3 any information that is in the public domain at the time of disclosure to a Receiving
 4 Party or becomes part of the public domain after its disclosure to a Receiving Party
 5 as a result of publication not involving a violation of this Order, including becoming
 6 part of the public record through trial or otherwise; and (b) any information known to
 7 the Receiving Party prior to the disclosure or obtained by the Receiving Party after
 8 the disclosure from a source who obtained the information lawfully and under no
 9 obligation of confidentiality to the Designating Party.

10 **B. Any use of Protected Material at trial shall be governed by the orders of**
 11 **the trial judge. This Order does not govern the use of Protected Material at trial.**

12 **V. DURATION**

13 A. Even after final disposition of this litigation, the confidentiality
 14 obligations imposed by this Order shall remain in effect until a Designating Party
 15 agrees otherwise in writing or a court order otherwise directs. Final disposition shall
 16 be deemed to be the later of (1) dismissal of all claims and defenses in this Action,
 17 with or without prejudice; and (2) final judgment herein after the completion and
 18 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
 19 including the time limits for filing any motions or applications for extension of time
 20 pursuant to applicable law.

21 **VI. DESIGNATING PROTECTED MATERIAL**

22 A. Exercise of Restraint and Care in Designating Material for Protection.

23 1. Each Party or Non-Party that designates information or items for
 24 protection under this Order must take care to limit any such designation to specific
 25 material that qualifies under the appropriate standards. The Designating Party must
 26 designate for protection only those parts of material, documents, items, or oral or
 27 written communications that qualify—so that other portions of the material,
 28 documents, items, or communications for which protection is not warranted are not

swept unjustifiably within the ambit of this Order.

2. Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

3. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

B. Manner and Timing of Designations.

1. Except as otherwise provided in this Order (*see, e.g.*, Section VI.B.2.b), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

2. Designation in conformity with this Order requires:

a. For information in documentary form (*e.g.*, paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

b. A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL" or "ATTORNEYS' EYES

ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” legend to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

c. For testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony.

d. For information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

C. Inadvertent Failures to Designate.

1. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS

A. Timing of Challenges.

1. Any party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

B. Meet and Confer.

1 1. The Challenging Party shall initiate the dispute resolution process
2 under Local Rule 37.1 *et seq.*

3 C. The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Challenges made for an improper purpose (e.g., to harass or
5 impose unnecessary expenses and burdens on other parties) may expose the
6 Challenging Party to sanctions. Unless the Designating Party has waived or
7 withdrawn the confidentiality designation, all parties shall continue to afford the
8 material in question the level of protection to which it is entitled under the Producing
9 Party's designation until the Court rules on the challenge.

10 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

11 **A. Basic Principles.**

12 1. A Receiving Party may use Protected Material that is disclosed or
13 produced by another Party or by a Non-Party in connection with this Action only for
14 prosecuting, defending, or attempting to settle this Action. Such Protected Material
15 may be disclosed only to the categories of persons and under the conditions described
16 in this Order. When the Action has been terminated, a Receiving Party must comply
17 with the provisions of Section XIV below.

18 2. Protected Material must be stored and maintained by a Receiving
19 Party at a location and in a secure manner that ensures that access is limited to the
20 persons authorized under this Order.

21 **B. Disclosure of "CONFIDENTIAL" Information or Items.**

22 1. Unless otherwise ordered by the Court or permitted in writing by
23 the Designating Party, a Receiving Party may disclose any information or item
24 designated "CONFIDENTIAL" only to:

25 a. The Receiving Party's Outside Counsel of Record in this
26 Action, as well as employees of said Outside Counsel of Record to whom it is
27 reasonably necessary to disclose the information for this Action;

28 b. The officers, directors, and employees (including House

1 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
2 Action;

3 c. Experts (as defined in this Order) of the Receiving Party to
4 whom disclosure is reasonably necessary for this litigation and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 d. The Court and its personnel;

7 e. Court reporters and their staff;

8 f. Professional jury or trial consultants, mock jurors, and
9 Professional Vendors to whom disclosure is reasonably necessary or this Action and
10 who have signed the “Acknowledgment and Agreement to be Bound” attached as
11 Exhibit A hereto;

12 g. The author or recipient of a document containing the
13 information or a custodian or other person who otherwise possessed or knew the
14 information;

15 h. During their depositions, witnesses, and attorneys for
16 witnesses, in the Action to whom disclosure is reasonably necessary provided: (i) the
17 deposing party requests that the witness sign the “Acknowledgment and Agreement
18 to Be Bound;” and (ii) they will not be permitted to keep any confidential information
19 unless they sign the “Acknowledgment and Agreement to Be Bound,” unless
20 otherwise agreed by the Designating Party or ordered by the Court. Pages of
21 transcribed deposition testimony or exhibits to depositions that reveal Protected
22 Material may be separately bound by the court reporter and may not be disclosed to
23 anyone except as permitted under this Stipulated Protective Order; and

24 i. Any mediator or settlement officer, and their supporting
25 personnel, mutually agreed upon by any of the parties engaged in settlement
26 discussions.

27 C. Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items.

28 1. The parties and all persons subject to this Order agree that

1 information designated as “ATTORNEYS’ EYES ONLY” may only be accessed or
2 reviewed by the following:

3 a. Material and information designated as “Highly
4 Confidential—Attorneys’ Eyes Only” shall only be disclosed to the Court, its staff,
5 in-house and outside counsel of record for each party, the secretarial, clerical, and
6 paralegal staff of each, and consulting and testifying experts retained by a party in this
7 action.

8 b. Other witnesses or persons to whom the Designating Party
9 agrees in advance of disclosure or by court order.

10 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
11 **PRODUCED IN OTHER LITIGATION**

12 A. If a Party is served with a subpoena or a court order issued in other
13 litigation that compels disclosure of any information or items designated in this
14 Action as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” that Party must:

15 1. Promptly notify in writing the Designating Party. Such
16 notification shall include a copy of the subpoena or court order;

17 2. Promptly notify in writing the party who caused the subpoena or
18 order to issue in the other litigation that some or all of the material covered by the
19 subpoena or order is subject to this Protective Order. Such notification shall include
20 a copy of this Stipulated Protective Order; and

21 3. Cooperate with respect to all reasonable procedures sought to be
22 pursued by the Designating Party whose Protected Material may be affected.

23 B. If the Designating Party timely seeks a protective order, the Party served
24 with the subpoena or court order shall not produce any information designated in this
25 Action as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” before a
26 determination by the Court from which the subpoena or order issued, unless the Party
27 has obtained the Designating Party’s permission. The Designating Party shall bear the
28 burden and expense of seeking protection in that court of its confidential material—

1 and nothing in these provisions should be construed as authorizing or encouraging a
2 Receiving Party in this Action to disobey a lawful directive from another court.

3 **X. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
4 **PRODUCED IN THIS LITIGATION**

5 A. The terms of this Order are applicable to information produced by a Non-
6 Party in this Action and designated as "CONFIDENTIAL" or "ATTORNEYS' EYES
7 ONLY." Such information produced by Non-Parties in connection with this litigation
8 is protected by the remedies and relief provided by this Order. Nothing in these
9 provisions should be construed as prohibiting a Non-Party from seeking additional
10 protections.

11 B. In the event that a Party is required, by a valid discovery request, to
12 produce a Non-Party's confidential information in its possession, and the Party is
13 subject to an agreement with the Non-Party not to produce the Non-Party's
14 confidential information, then the Party shall:

15 1. Promptly notify in writing the Requesting Party and the Non-Party that
16 some or all of the information requested is subject to a confidentiality agreement with
17 a Non-Party;

18 2. Promptly provide the Non-Party with a copy of the Stipulated Protective
19 Order in this litigation, the relevant discovery request(s), and a reasonably specific
20 description of the information requested; and

21 3. Make the information requested available for inspection by the Non-
22 Party.

23 C. If the Non-Party fails to object or seek a protective order from this court
24 within 14 days of receiving the notice and accompanying information, the Receiving
25 Party may produce the Non-Party's confidential information responsive to the
26 discovery request. If the Non-Party timely seeks a protective order, the Receiving
27 Party shall not produce any information in its possession or control that is subject to
28 the confidentiality agreement with the Non-Party before a determination by the Court.

Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

A. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (1) notify in writing the Designating Party of the unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies of the Protected Material, (3) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (4) request such person or persons to execute the “Acknowledgment and Agreement to be Bound” that is attached hereto as Exhibit A.

XII. MISCELLANEOUS

A. Right to Further Relief.

1. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

B. Right to Assert Other Objections.

1. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

C. Filing Protected Material.

1. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the Court, then the Receiving Party may file the information in the public record unless otherwise instructed by the Court.

1 **XIII. FINAL DISPOSITION**

2 A. After the final disposition of this Action, as defined in Section V, within
 3 sixty (60) days of a written request by the Designating Party, each Receiving Party
 4 must return all Protected Material to the Producing Party or destroy such material. As
 5 used in this subdivision, “all Protected Material” includes all copies, abstracts,
 6 compilations, summaries, and any other format reproducing or capturing any of the
 7 Protected Material. Whether the Protected Material is returned or destroyed, the
 8 Receiving Party must submit a written certification to the Producing Party (and, if not
 9 the same person or entity, to the Designating Party) by the 60 day deadline that (1)
 10 identifies (by category, where appropriate) all the Protected Material that was returned
 11 or destroyed and (2) affirms that the Receiving Party has not retained any copies,
 12 abstracts, compilations, summaries or any other format reproducing or capturing any
 13 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 14 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
 15 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
 16 reports, attorney work product, and consultant and expert work product, even if such
 17 materials contain Protected Material. Any such archival copies that contain or
 18 constitute Protected Material remain subject to this Protective Order as set forth in
 19 Section V.

20 B. Any violation of this Order may be punished by any and all appropriate
 21 measures including, without limitation, contempt proceedings and/or monetary
 22 sanctions.

23 **XIV. CLAW-BACK REQUESTS**

24 A. The production of privileged or work-product protected documents, ESI,
 25 or information, whether inadvertent or otherwise, is not a waiver of the privilege or
 26 protection from discovery in this case or in any other federal or state proceeding.

27 B. This Order shall be interpreted to provide the maximum protection
 28 allowed by Federal Rule of Evidence 502(d) and shall be enforceable and granted full

1 faith and credit in all other state and federal proceedings by 28 U.S. Code § 1738. In
2 the event of any subsequent conflict of law, the law that is most protective of privilege
3 and work product shall apply.

4 C. Nothing contained herein is intended to or shall serve to limit a party's
5 right to conduct a review of documents, ESI, or information (including metadata) for
6 relevance, responsiveness and/or segregation of privileged, and/or protected
7 information before production.

8 D. If the Receiving Party has reason to believe that a produced document or
9 other information may reasonably be subject to a claim of privilege, then the
10 Receiving Party shall immediately sequester the document or information, cease
11 using the document or information and cease using any work product containing the
12 information, and shall inform the Producing Party of the beginning BATES number
13 of the document or, if no BATES number is available, shall otherwise inform the
14 Producing Party of the information.

15 E. A Producing Party must give written notice to any Receiving Party
16 asserting a claim of privilege, work-product protection, or other ground for reclaiming
17 documents or information (a "claw-back request"). After a claw-back request is
18 received, the Receiving Party shall immediately sequester the document or
19 information (if not already sequestered) and shall not review or use that document, or
20 any work product containing information taken from that document, for any purpose.
21 The parties shall meet and confer regarding any claw-back request.

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PURSUANT TO STIPULATION IT IS SO ORDERED.

DATED: October 31, 2022



Honorable KENLY KIYA KATO
United States Magistrate Judge

Submitted on behalf of Attorneys for Plaintiff

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4878-1957-5355, v. 1